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RECENT DEVELOPMENT

PRO-FOOTBALL, INC. V. TUPA: AN EMPLOYMENT CONTRACT'S FORUM SELECTION CLAUSE CANNOT PRECLUDE THE MARYLAND WORKERS' COMPENSATION COMMISSION FROM EXERCISING ITS JURISDICTION; A PROFESSIONAL FOOTBALL PLAYER'S INJURY SUSTAINED WHILE WORKING IS A COMPENSABLE "ACCIDENTAL" INJURY WITHIN THE MEANING OF THE MARYLAND WORKERS' COMPENSATION ACT.

By: Ellen A. Spielman

The Court of Appeals of Maryland held that a forum selection clause in a professional football player's employment contract did not divest the Maryland Workers' Compensation Commission's jurisdiction over the player's claim. *Pro-Football, Inc. v. Tupa*, 428 Md. 198, 51 A.3d 544 (2012). The court further determined that the injury the player sustained was "accidental," as defined by the Maryland Workers' Compensation Act and thus compensable. *Id.* In overruling *Rowe v. Baltimore Colts*, the court determined that an injury does not need to be unusual or unexpected in order to be considered "accidental" under the statutory language. *Id.* at 210-11, 51 A.3d at 551.

In 2004, Thomas Tupa ("Tupa") entered into a four-year National Football League employment contract with Pro-Football, Inc. ("Pro-Football"), trading as the Washington Redskins, to play football as a punter. The Washington Redskins are incorporated in Maryland and the football stadium where they play home games and conduct pre-game warm-ups is located in Prince George's County, Maryland. Pro-Football's headquarters and practice facility are located in Virginia. The employment contract between Pro-Football and Tupa included a forum selection clause, which stated that the Virginia Workers' Compensation Commission had exclusive jurisdiction for any workers' compensation claims. On August 19, 2005, Tupa suffered an injury while warming-up prior to a pre-season game at FedEx Field. Tupa landed awkwardly after a punt, which caused a sharp pain in his lower back and he immediately received medical treatment. Two days after the accident, Tupa visited a doctor who determined that Tupa had progressive disc degeneration and was unable to continue to play football.

In March 2007, Tupa filed a claim with the Maryland Workers' Compensation Commission ("Commission"), which Pro-Football and its insurers challenged Tupa's claim on jurisdictional grounds and whether the injury was related to the kicking incident in 2005. In March 2008, the Commission decided it could exercise jurisdiction over the claim, and

that the August 2005 “accidental injury” caused Tupa’s disability. The Commission awarded Tupa temporary partial disability benefits and ordered Pro-Football and its insurers to pay his medical expenses.

Pro-Football filed an action for judicial review in the Circuit Court for Prince George’s County, and requested a jury trial. The jury concluded that Tupa suffered an accidental injury as a result of the August 2005 kicking incident and that the injury caused his disability. As a matter of law, the circuit court determined that the Commission properly exercised jurisdiction over the claim. Pro-Football appealed to the Court of Special Appeals of Maryland, which affirmed the lower court’s decision. Pro-Football petitioned the Court of Appeals of Maryland for a writ of certiorari on the issues of jurisdiction and whether the injury was “accidental.”

The court began its analysis by examining section 9-104 of the Maryland Workers’ Compensation Act (“Act”) to determine the validity of the forum selection clause. *Pro-Football, Inc.*, 428 Md. at 205-06, 51 A.3d at 548 (citing *Secure Fin. Serv., Inc. v. Popular Leasing USA, Inc.*, 391 Md. 274, 282, 892 A.2d 571, 576 (2006)). Although the court acknowledged that forum selection clauses are presumptively enforceable, the Maryland Workers’ Compensation Act explicitly states that an employer cannot waive any right of an employee under the Act. *Pro-Football, Inc.*, 428 Md. at 206, 51 A.3d at 548-49. The court found that the plain statutory language of the rights under section 9-104(a) of the Act prevents an employer from using language in an employment contract which would preclude employers from providing workers’ compensation payments to employees as otherwise provided under Maryland law. *Pro-Football, Inc.*, 428 Md. at 207, 51 A.3d at 549.

The court rejected Pro-Football’s interpretation of the Act and emphasized that statutes must be interpreted as they are plainly worded. *Pro-Football, Inc.*, 428 Md. at 207, 51 A.3d at 549 (citing *Harris v. Bd. of Educ.*, 375 Md. 21, 31, 825 A.2d 365, 371 (2003)). The Court of Appeals of Maryland also relied on previous case law, in which it held that a forum selection clause in an employment contract was ineffective. *Pro-Football, Inc.*, 428 Md. at 208, 51 A.3d at 549 (citing *McElroy v. Pohopek*, 375 Md. 574, 578 n.2, 594-95, 826 A.2d 474, 476 n.2, 486 (2003)).

The court next addressed whether Tupa’s injury was an “accidental injury” within the meaning of Maryland workers’ compensation law. *Pro-Football, Inc.*, 428 Md. at 209, 51 A.3d at 550. In concluding that Tupa’s injury was accidental within the meaning of section 9-104, the court rejected the holding of *Rowe v. Baltimore Colts*, where the Court of Special Appeals of Maryland determined that a football player who was injured in a scrimmage had not suffered an “accidental injury” within the

meaning of the Maryland Workers' Compensation Act. *Id.* (citing *Rowe v. Baltimore Colts*, 53 Md. App. 526, 454 A.2d 872 (1983)). The intermediate appellate court defined an "accidental injury" as one that was "produced by some unusual and extraordinary condition or happening in the employment." *Pro-Football, Inc.*, 418 Md. at 209, 51 A.3d at 550 (quoting *Rowe*, 53 Md. App. at 535, 454 A.2d at 877). Due to the physicality of professional football, the *Rowe* court determined most of the injuries in that occupation were to be expected and viewed them as routine occurrences. *Pro-Football, Inc.*, 418 Md. at 209, 51 A.3d at 550-51 (quoting *Rowe*, 53 Md. App. at 535, 454 A.2d at 877).

In affirming the Court of Special Appeals of Maryland's rejection of *Rowe*, the Court of Appeals of Maryland held the *Rowe* holding was inconsistent with recent case law. *Pro-Football, Inc.*, 428 Md. at 210, 51 A.3d at 551 (citing *Harris*, 375 Md. 21, 825 A.2d 365). In *Harris*, the Court of Appeals of Maryland redefined "accidental injury" to mean, "what must be unexpected, unintended or unusual is the resulting injury and *not* the activity out of which the injury arises." *Pro-Football, Inc.*, 428 Md. at 210-11, 51 A.3d at 551 (quoting *Harris*, 375 Md. at 36, 51 A.2d at 374). The court found this definition to be consistent with legislative intent of the Maryland Workers' Compensation Act. *Pro-Football, Inc.*, 428 Md. at 211, 51 A.3d at 551-52 (citing *Harris*, 375 Md. at 33, 825 A.2d at 372). According to the court, the Act was intended to create a cause of action for all injuries incurred during the course of dangerous employment. *Pro-Football, Inc.*, 428 Md. at 211, 51 A.3d at 551-52 (citing 2 LARSON'S WORKERS' COMPENSATION § 22.04 (2007)). The Court of Appeals of Maryland found that, as a result of this definition, the Commission properly granted Tupa disability benefits. *Pro-Football, Inc.*, 428 Md. at 213, 51 A.3d at 552-53.

In *Pro-Football v. Tupa*, the Court of Appeals of Maryland expanded the definition of "accidental injury" under the Maryland Workers' Compensation Act. Under the *Rowe* definition, individuals employed in more dangerous occupations were unlikely to receive compensation because any injury would most certainly arise out of an intended or usual course of their employment. This broader definition makes it easier for individuals engaged in employment where injuries are common, like contact sports, to receive just compensation for injuries sustained during the course of employment. In addition, the court has made forum selection clauses in employment contracts for workers' compensation actions ineffective, guaranteeing employees the rights afforded to them under the Maryland Workers' Compensation Act. Both of these decisions have the potential to increase the incentive for employers to create safer work environments for their employees. The incentive to create a safer work environment is more substantial for employers of

inherently dangerous occupations, as employees may now have a cause of action against their employer to seek workers' compensation in Maryland.